

CRIMINAL LAW JOURNAL

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| The High Court on crime in 2015: Analysis and jurisprudence – Stephen Odgers | |
| This article discusses all of the High Court decisions in 2015 that relate to criminal matters. It examines the principles that derive from these cases and identifies jurisprudential themes from the decisions. It also discusses the significance of the cases and the possible wider consequences of the decisions. | 6 |
| The vagaries of construction of the carriage service offence in s 474.17 of the Commonwealth Criminal Code – Clive Turner | |
| Section 474.17 of the Commonwealth Criminal Code makes it an offence for a person to use a “carriage service” in a way that reasonable persons would regard as being, in all the circumstances, “menacing, harassing or offensive”. The apparent simplicity of the section belies a more complex structure when read in conjunction with the general principles of criminal responsibility set down in the Code. A further layer of complexity was introduced by the decision of the High Court in <i>Monis v The Queen</i> , where the justices expressly adopted a narrow construction of “menacing, harassing or offensive” that has been applied in subsequent cases. This article examines the structure and elements of s 474.17, and contrasts the changing position over its interpretation in light of <i>Monis</i> | 16 |
| Recent developments in Canadian criminal law – Gerry Ferguson and Benjamin L Berger | |
| This review canvasses and analyses a number of significant sentencing, substantive, procedural and evidentiary developments in Canadian criminal law. Recent political changes lead to hopes for a new course for criminal law policy in Canada, including rolling back of mandatory minimum sentences. This review examines the Supreme Court’s most recent statement on the constitutionality of mandatory minimums, and the broader implications of that decision. Topics covered in this article also include the striking down of the criminal prohibition against medically assisted suicide, enactment of reactionary prostitution offences, an affirmation of the strong presumption of subjective mens rea for crimes without express words of mens rea, clarification of the intoxication defence, a radical limitation on the defence of provocation by the former, tough-on-crime Conservative government, a reaffirmation that sexsomnia constitutes insanity rather than automatism, developments in the admissibility of confessions obtained through undercover “Mr Big” police operations, and abolition of spousal incompetence. | 33 |
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